

EXHIBIT 39

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

ULTIMA SERVICES CORPORATION,

Plaintiff,

-vs-

Case No. 2:2020-cv-00041

U.S. DEPARTMENT OF AGRICULTURE, et al.,

Defendants.

VIDEOCONFERENCED DEPOSITION OF HOWARD STOVER

Thursday, May 5, 2022

10:02 a.m.

Pages 1 - 116

REPORTED BY: KARINA L. JENNINGS

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2 Videoconferenced deposition of HOWARD STOVER, taken
3 pursuant to Notice before Karina L. Jennings, Court
4 Reporter, and Notary Public for the Commonwealth of
5 Virginia.
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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

MICHAEL E. ROSMAN, ESQUIRE

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ON BEHALF OF THE AGENCY:

JULIET GRAY, ESQUIRE

U.S. DEPARTMENT OF JUSTICE

Civil Rights Division

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1 as my memory goes, I believe that is accurate.

2 Q Okay. But you did administer those
3 contracts, correct?

4 A I did.

5 Q Okay. Now, during that same period of
6 time, were you actually soliciting contracts for
7 other services for NRCS?

8 A Yes.

9 Q Okay. Just generally -- very generally
10 how would that process work?

11 A Well, there's three main processes that
12 we use. The first one is of course full and open
13 through the government public network, what at the
14 time was known as the business opportunities web
15 site, and -- to get on that web site -- for a
16 contractor to be -- to get a contract from that web
17 site or to participate in a solicitation, he only
18 needed to be registered with -- with SAM, so he
19 had -- had to be registered with the government, but
20 that was the only requirement.

21 The other type of contracts we did was
22 from the Federal Schedule, and for a contractor to be
23 awarded a contract from the Federal Schedule, he
24 already had to have a contract on the Federal
25 Schedule.

1 And the third procurement method we used
2 was through the 8(a) program, which we awarded
3 contracts to disadvantaged businesses. And to be a
4 8(a) contractor, you had to be registered with the
5 Small Business Administration.

6 So basically those are the three tools
7 for use. Once in a while something quirky would come
8 up, like for furniture we would use the prison
9 system, but by and large -- oh, excuse me -- there's
10 one more -- we would also use a Ability One, which is
11 for handicapped people, and it worked somewhat like
12 the 8(a) program. But -- so basically those are the
13 methods we used to contract for services -- for
14 supplies and services.

15 Q Okay. Let me just ask you a question
16 about the Federal Supply Schedule. You said in order
17 to obtain a contract pursuant to the Federal Supply
18 Schedule -- I thought what you said is you had to
19 have a contract with the Federal Supply Schedule, but
20 I may have misunderstood.

21 A No, you didn't misunderstand.

22 Q Okay. How -- how do you get the first
23 contract with the Federal Supply Schedule, I guess is
24 my question?

25 A Well, you call up the GSA and you tell

1 that time was named Allen Johnson.

2 Q Allen Johnson?

3 A Yes.

4 Q Okay. Thank you. And was the option
5 for Region 4 exercised early?

6 A I do recall it was, yes, shockingly
7 early.

8 Q You thought it was shockingly early?

9 A Yes.

10 Q During this period of time that Ultima
11 was performing task orders under the IDIQ, did you
12 continue to communicate with permanent staff at the
13 NRC offices regarding Ultima's performance?

14 A Yes.

15 Q Do you recall which NRCS offices you
16 communicated with?

17 A All of them.

18 Q All of them?

19 A All of them -- excuse me -- let me take
20 that back. Every state where I was the
21 administrative contract officer over the task order,
22 I communicated with those states more or less on a
23 daily basis, and I've gotten feedback about the
24 Ultima contract, yes.

25 Q And did they communicate to you their

1 opinion of Ultima's performance in their office?

2 A Yes.

3 Q And generally speaking, what were their
4 comments about Ultima's performance?

5 A Without exception, they were described
6 as outstanding or excellent.

7 Q Did you have any involvement with the
8 decision to cancel the IDIQ contract?

9 A No.

10 Q Were you surprised when the IDIQ
11 contracts were canceled?

12 A Yes.

13 Q Okay. Why?

14 A It -- it seemed to be a win-win
15 situation for both the government, the contractor,
16 and the customers. The contracts ran smoothly, there
17 was little turnover of personnel. Ms. Bennett, the
18 owner of Ultima, had excellent rapport with the
19 customers. It was -- it was a smooth sailing ship.

20 MR. ROSMAN: So Michelle, if you could put
21 the decision memo into Exhibit Share.

22 MS. SCOTT: Hang on just a second.

23 MR. ROSMAN: We're going to test our
24 technological capabilities now, Mr. Stover.

25 THE WITNESS: Okay.

1 Q Okay. That's really what I was trying
2 to get at. That's fine. So did you speak with NRCS
3 personnel in Colorado about Ultima's performance
4 under this task order?

5 A Several times.

6 Q Oh, I'm sorry, I meant to -- was there a
7 task order prior to this one, the one that we just
8 looked at, so cover --

9 A I don't remember.

10 Q Okay. Fair enough. So what did the
11 NRCS person in Colorado communicate with you
12 concerning Ultima's performance in Colorado under
13 that task order?

14 A Well, they went to the regional
15 conservationist, Mr. Astor Boozer, and had Mr. Boozer
16 call me to do -- change the termination around and to
17 give Ultima back the contract, because they were --
18 they were of the opinion that they could not -- that
19 Ultima had been a really good contractor and they did
20 not want to lose them.

21 Q So now I'm going to just ask you about
22 your authority after the IDIQ contracts were
23 canceled. If a task order had been issued pursuant
24 to the IDIQs prior to the time that you learned that
25 the IDIQs had been canceled, did you have the

1 A Yeah, pretty much, yes.

2 Q Well, just to close the loop here, let's
3 go out and take a look at Exhibit 12. And can you
4 just identify this document for us?

5 A Yes, this is the contract for the 8(a)
6 company, Time Systems, in Colorado.

7 Q Okay. Very good. Thank you.

8 MR. ROSMAN: Michelle, if you could put HI1
9 into Exhibit Share, that would be great.

10 BY MR. ROSMAN:

11 Q While she's doing that, Mr. Stover, did
12 you give any thought -- let me rephrase the question.
13 Do you recall whether you considered the possibility
14 of trying to meet the requirements through a total
15 small business set aside in Colorado?

16 A I don't remember what my thought process
17 was.

18 Q Do you know someone named Randy Randall?

19 A Yes, I know Mr. Randall.

20 Q Did you ever have any conversations with
21 Mr. Randall about the requirement in Colorado for
22 administrative services?

23 A Yes, Mr. Randall very much wanted to
24 keep the Ultima contract in place. Him and the
25 Colorado state conservationist went to Mr. Astor

1 Boozer, who was the regional conservationist, and
2 appealed to him to get me to change my mind and to
3 carry on with the Ultima contract. But as I
4 explained to Mr. Boozer, that decision had already
5 been made by my higher headquarters.

6 Q All right. If you could look at Exhibit
7 13 now. It's a little light. I was wondering if
8 this is a document that you remember and/or can
9 identify?

10 A Yeah, this looks like a -- this looks
11 like a answer to a question from a solicitation from
12 Hawaii where the contractor had called in and asked
13 for what was the contract price, who had the contract
14 before, and when did they have it, things of that
15 nature.

16 Q Got it. And did you -- is this
17 something you wrote?

18 A I don't -- I don't remember. I would
19 suppose I did.

20 Q You're listed as the contracting officer
21 on the second page?

22 A Well, yeah, that means I probably wrote
23 it, yeah.

24 Q Okay. That's really what I was trying
25 to get at. So even if you don't remember, it's most

1 number is just an estimate, just -- just like you
2 would on a construction contract, you'd give this --
3 a magnitude of the services, just some kind of
4 ballpark figure of what you think the services should
5 cost.

6 Q More generally, did you find that the
7 cost of using the 8(a) program were either higher or
8 lower than the costs of using Ultima under the IDIQ
9 contracts?

10 A Generally speaking -- and not about
11 Ultima, just generally speaking -- 8(a) tends to be
12 higher because there's no competition. You know,
13 you're comparing a -- you're offering up a sole
14 source contract to one person, and there's not a
15 bidding process. Just by having a bidding process
16 makes the price lower. So generally speaking, not
17 specifically to the Ultima contracts, the prices are
18 lower when you compete it.

19 Q All right. One more question about this
20 document. I've noticed that a number of offerings
21 that you personally have done tend to be by e-mail;
22 is that right -- was that your tendency?

23 A Yeah, I kind of evolved to that because
24 of when I first started at NRC -- well, I won't tell
25 any stories. But because of my experience, I found

1 Q Oh, okay. Good, good, good. Thank you
2 for letting me know that. You see under Hawaii
3 Administrative Services?

4 A Yes, I'm seeing that.

5 Q You see where it says question number 2?

6 A Yes, I do.

7 Q Okay. And then just go one paragraph
8 below that, and just read the first sentence there.

9 A Yes, that's accurate.

10 Q Okay. And is that -- so that was
11 accurate for the Hawaii contract. Was it also true
12 for the Montana and Utah contracts?

13 A Yes, everything came together, and it
14 was year end, and this is one of 25 contracts I was
15 working on.

16 Q Okay. And so there was -- the end of
17 fiscal year workload was a motivating factor in
18 utilizing the 8(a) program?

19 A No, not -- not really, because my -- my
20 initial intent was to do full and open competition,
21 and what happened is that the response to the full
22 and open competition was overwhelming, I had over 22
23 pages of questions about the solicitations from
24 people who wanted to bid on it, and I just -- and I
25 would answer one set of questions, and the next

1 morning my e-mail would be filled with another box of
2 questions. And we were getting closer and closer to
3 the end of the fiscal year, and that more than
4 anything else was the reason why I turned to the
5 8(a). I simply just couldn't keep up with the amount
6 of questions being asked about these solicitations
7 with the year end coming.

8 Q So how long does it generally take to
9 award a contract that is competitively bid upon
10 outside of the 8(a) program?

11 A Well, that's -- it could take three
12 days, it could take three months. I mean, it depends
13 on what the project is, what's the magnitude, the
14 moving pieces on it, the valuation process, who you
15 need to include in the valuation process, are you
16 going to be the sole -- are you going to be the sole
17 selection authority, are you going to have some sort
18 of valuation board that you have to make time to get
19 together to talk over the proposals? And of course,
20 it depends on the amount of proposals you can get.
21 If you put out this wide administrative services and
22 you get two bids, you know, you could do it in an
23 afternoon. But if you put it out and get 157 bids,
24 as I have received one time -- not for Hawaii, but
25 for another state -- it takes more of an effort to go

1

2 BY MR. ROSMAN:

3 Q The contract says May 2017 to 2022. Is
4 that unusual for the dates on the signatures to be a
5 year later than the start date of the contract, or
6 almost a year?

7 A No, if I were to venture -- I would bet
8 that the -- the date itself is wrong, I would
9 venture, because as you said before, the IDID -- the
10 IDIQ contract did not start till 2018. And this
11 specifically says it was using the LAPSS
12 administrative contract, which did not start till
13 2018. So this date would have to be wrong.

14 Q Okay. So I'm still a little confused,
15 so let me make sure I understand it. When do you
16 think the task order for Ultima to provide
17 administrative services for the NRCS offices in
18 Washington was issued?

19 A Well, it would have had to have been
20 issued after the issuance of the IDIQ contract.

21 Q So that would be 2017; is that right?

22 A No, I mean -- I think it was -- I
23 thought it was 2018. Was it 2017?

24 Q I think we've discussed earlier --

25 A I mean, I don't remember. You know,

1 you're asking me about something that happened, you
2 know, four or five years ago. I mean, I'm sorry, I
3 don't remember the sequence. And you know -- and
4 there are documents with mistakes in them, so I mean,
5 I don't -- I don't know what you want me to say, you
6 know, if -- it would appear from this that Ultima had
7 the contract, that the contract was ordered
8 terminated because they hit their ceiling, and that I
9 went to the 8(a) program and gave it to POWTEC, and
10 once POWTEC graduated, I passed it on to another
11 8(a) -- that would appear to be the sequence of
12 events to me.

13 Q Okay. So let's go back then to your
14 decision to award the requirement to POWTEC through
15 the 8(a) program.

16 A Okay.

17 Q Why did you do that?

18 A Well, we've been through this once
19 before. I went through this in painstaking detail
20 this morning about why I awarded to POWTEC. Don't
21 you remember that?

22 Q I think we were talking about a
23 different state.

24 A No, we were talking about Washington
25 state.

1 California was trying to do a sole source
2 justification to use Ultima on a bridge contract that
3 was going to last a year, I believe -- it may have
4 been six months, but I think it was a year. You
5 showed me that document this morning. We were not
6 talking about Washington. We were talking about
7 California in terms of -- of that particular
8 contract. And when I told you about POWTEC, we were
9 talking about the State of Washington.

10 Q Okay. All right. So then let me just
11 make sure I understand your testimony. You chose to
12 use the 8(a) program to provide NRCS offices in
13 Washington with administrative services because there
14 was a time crunch?

15 A Yeah, absolutely there was a time crunch
16 in Washington.

17 MR. ROSMAN: Okay. Very good.

18 All right. Michelle, if you could
19 give me OR1 and OR2. And you might as well do OR3 as
20 well.

21 BY MR. ROSMAN:

22 Q Mr. Stover, if you could just take a
23 quick look at Exhibit 25. Is this a document that
24 you can identify?

25 A Yeah, looks like a request to go to the

CERTIFICATE OF COURT REPORTER

I, Karina L. Jennings, do hereby certify that I recorded verbatim the proceedings in the aforementioned case on May 5, 2022.

I further certify that the foregoing pages, numbering 1 through 116 inclusive, constitute a true, accurate, and complete transcript of said proceedings.

Given under my hand this 24th day of May, 2022.

A handwritten signature in black ink, appearing to read "Karina L. Jennings", is written over a horizontal line.

Karina L. Jennings, Court Reporter

Ultima Services Corporation v. US Department Of Agriculture Et
Howard Stover (#5214347)

E R R A T A S H E E T

PAGE 6 LINE 7 CHANGE for to with

REASON _____

PAGE 12 LINE 11 CHANGE USDA

REASON _____

PAGE 14 LINE 12 CHANGE protection to production

REASON _____

PAGE 7 LINE 13 CHANGE admin to administration

REASON _____

PAGE 109 LINE 5 CHANGE counseling to canceling

REASON _____

VARIOUS
PAGE _____ LINE _____ CHANGE see below

28 instances where I was quoted as saying "yeah" should be "yes"

REASON _____

Howard Stover

Date

Ultima Services Corporation v. US Department Of Agriculture Et
Howard Stover (#5214347)

E R R A T A S H E E T

PAGE 59 LINE 24 CHANGE farm to FAR

REASON _____

PAGE 65 LINE 17 CHANGE had to hadn't

REASON _____

PAGE 81 LINE 11 CHANGE throw to federal

REASON _____

PAGE 86 LINE 23 CHANGE properly to improperly

REASON _____

PAGE 87 LINE 6 CHANGE stitch to stench

REASON _____

PAGE 92 LINE 18 CHANGE valuation to evaluation

REASON _____

Howard Stover

Date

Ultima Services Corporation v. US Department Of Agriculture Et
Howard Stover (#5214347)

ACKNOWLEDGEMENT OF DEPONENT

I, Howard Stover, do hereby declare that I
have read the foregoing transcript, I have made any
corrections, additions, or changes I deemed necessary as
noted above to be appended hereto, and that the same is
a true, correct and complete transcript of the testimony
given by me.

Howard Stover

23 June 2022

Howard Stover

Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS

____ DAY OF _____, 20____.

NOTARY PUBLIC